

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8579 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K M MODI

Versus

COMMANDANT,

Appearance:

None present for Petitioner
MR DP JOSHI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/10/97

ORAL JUDGMENT

Heard learned counsel for respondents and perused the Special Civil Application.

2. The petitioner, Stenographer (Gujarati), Gr.II, in the S.R.P. Group-II, Saijpur Bogha, Ahmedabad, filed this Special Civil Application and challenges the order, annexure 'A' dated 30.11.91, whereunder he was posted

back to S.R.P. Group-VII, Nadiad, from S.R.P. Group-II, Ahmedabad.

3. The petitioner has been appointed on the post of Stenographer Gr.II under the Centralized Recruitment Scheme and he was posted/allotted by the Collectorate, Kheda, to S.R.P. Group-VII at Nadiad. The petitioner, after his first appointment, due to family hardships and illness of his old mother, made a request to the Director General of Police and also Inspector General of Police (Arms Unit) to post him at Ahmedabad District. The D.G.P. and Sp.I.G.P. accepted the application of the petitioner and under the order dated 19th September 1984, posted him in Ahmedabad District, where he joined on 12.10.84. Under the impugned order, the petitioner was sent back to the S.R.P. Group-II, Nadiad, and reason has been given that Sp.I.G.P. (Arms Unit) has no competence to make such transfer. The petitioner has come up with the case in this Special Civil Application that as per the Circular of G.A.D., the services of the Stenographers appointed under Centralized Recruitment Scheme are not transferable out of District, but in case of hardship, a proposal for transferring an employee from one District to another District can be entertained by G.A.D. The petitioner has been posted at Ahmedabad District on 12th October 1984 and after about seven years, on this ground he was sought to be sent back to Nadiad. He made representation to the Secretary, G.A.D. on 8.3.90 for regularization of his transfer/posting in Ahmedabad, but nothing has been done on that representation and hence this Special Civil Application before this Court.

3. This Court has protected the petitioner by grant of interim relief in terms of para 13(b) of the Special Civil Application. So for all these years, the petitioner is working at Ahmedabad.

4. The learned counsel for respondents, with all vehemence at his end, contended that the very transfer/posting of the petitioner at Ahmedabad District is without any authority of law and as such, the Department has not committed any error whatsoever to repatriate the petitioner back to his parent District.

5. I find sufficient merits in this contention of the learned counsel for the respondents. Under the Circular of G.A.D., reference of which has been made by petitioner in this Special Civil Application, such transfers are only permissible under the orders of the Government and not by the Department. So the order of transfer of the petitioner to Ahmedabad District is not a

legal order. However, this Court cannot be oblivious of the fact that the Department itself has not noticed this illegality for seven years and the petitioner has been permitted to continue at Ahmedabad. The petitioner also made a request to the G.A.D. to consider his case for his continuation at Ahmedabad District. Looking to the fact that the petitioner is at Ahmedabad for years together, it would have been rather better that G.A.D. should have taken a pragmatic and practical approach in the matter rather than to go on the question of superiority in the affairs of transfers. It appears to be a case where the G.A.D. has taken an exception to the transfer of the petitioner to Ahmedabad District.

6. In the facts and circumstances of the case, interest of justice will be met in case this Special Civil Application is disposed of with direction to respondent No.5 to consider the case of petitioner for regularizing his transfer made at Ahmedabad District under the order dated 19th September 1984, by Sp.I.G.P. (Arms Unit), Ahmedabad. In case respondent No.5 is not agreeable for regularization of transfer of the petitioner at Ahmedabad District, a reasoned order may be passed and a copy of the same may be sent to the petitioner. The Special Civil Application and Rule stand disposed of accordingly with no order as to costs.

.....

(sunil)